Supreme Court, U.S.
FILED
JAN 5 1998
CLERK

(2)

No. 97-987

In The

Supreme Court of the United States

October Term, 1997

CAROLINE RUSSELL, JAMES ADAMS
AND GERALD JEFFORDS,

Petitioners,

v.

THOMAS WILKINSON, BENJAMIN WILKINSON
AND JONATHAN WEIGAND, MINORS,
BY AND THROUGH THEIR GUARDIAN,
THOMAS WILKINSON,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Second Circuit**

RESPONDENTS' OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

HAROLD B. STEVENS, ESQUIRE
Counsel of Record
P.O. Box 1200
Stowe, Vermont 05672
802-253-8547
Counsel for Respondents

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

6 pp

PARTIES TO THE PROCEEDING

The petition accurately lists the parties to the proceedings.

STATEMENT OF FACTS

The facts of the case are set out in detail in the Appendix C of the Appendices to Petitioners' brief (App. 18-27). Petitioners are Vermont social workers, who in January 1992, negligently investigated and reported that Respondent, Thomas Wilkinson, had sexually abused his four year old son. Petitioners' substantiation led to Wilkinson's arrest and loss of custody of his child for a period of over four years. Respondents brought suit against Petitioners since 1) Petitioners never reported exculpatory evidence that the child had said he had made up the allegations; 2) Petitioners never contacted Respondent prior to substantiating the abuse; 3) Petitioners did not disclose that the child's mother had been accused of sexually abusing her nephew during their investigation; and 4) despite a written consent agreement to desubstantiate the abuse charges one of the Petitioners again resubstantiated abuse charges against Wilkinson to her Connecticut counterparts, without a prior hearing.

Petitioners have twice moved for summary judgment claiming they did not know they were violating Respondents' fundamental constitutional rights of family integrity or due process in substantiating and resubstantiating the abuse charges. Respondents submitted affidavits of Dr. Douglas Dennett, M.D., and Roger Kessler, a psychologist, in opposition to summary judgment. It was Dr. Dennett's opinion that Petitioners were grossly negligent and had no objective reasonable basis to substantiate abuse. Mr. Kessler stated that he had worked with Petitioners and that they were aware of a parent's constitutionally protected interest in the companionship of their children.

The District Court refused to grant Petitioners' motions for summary judgment finding the relevant facts were disputed as to whether or not Petitioners acted in an objectively reasonable manner and whether they should have known that they were violating Respondents' clearly established rights (App. 39, 43 and 44). Since there were genuine issues of fact in dispute the Second Circuit has twice dismissed Petitioners' intermediate appeals from the two summary judgment decisions.

REASONS FOR NOT GRANTING THE WRIT OF CERTIORARI

I.

The Dismissals of Petitioners' Appeals Due to Genuine Issues of Fact Were Proper.

Petitioners totally overlook that there is a genuine issue of fact as to whether or not they knew or should have known they were violating Respondents' constitutional rights of family integrity and/or due process of law. The Court has recognized in *Johnson v. Jones*, 515 U.S. ___, 115 S.Ct. 2151, 2156 (1995) that summary judgment decisions concerning qualified immunity which involve genuine issues of fact are not final orders and are not appealable. Therefore, the Court of Appeals, acted properly and according to law in dismissing the appeals since a genuine issue of fact was in dispute affecting the merits of the case.

II.

The Court of Appeal's and District Court's Decisions Are Not Contrary To The Decisions of Other Courts of Appeal and the Vermont Supreme Court.

The federal law concerning the constitutional liberty interest to family integrity has been clearly established although definitions of the right have been developing to clarify when the right is violated. See App. 37-44. Here there was evidence before the District Court that Petitioners actually knew that parents have a constitutional right to be free of arbitrary state interference with the companionship of their children. Petitioners simply disputed the fact that they knew or should have known of the right to family integrity.

The District Court decision does not necessarily conflict with the Vermont Supreme Court decision in the case of *Billado v. Appel,* 657 A. 2d 84 (Vt. 1996). The reason being that the *Billado v. Appel* case involved negligent acts of Vermont social workers during the period of 1989 to 1990 while the case at hand involves social workers' acts in 1992 when they knew or should have known of the right to family integrity.

CONCLUSION

The petition should not be granted since there is a genuine issue of fact concerning the issue of qualified immunity.

Respectfully submitted,

HAROLD B. STEVENS, ESQUIRE
Attorney for Respondents
P.O. Box 1200
Stowe, Vermont 05672
(802) 253-8547